

## **Due Process Rights and Children: Fifty Years of *In re Gault* – Part Three, the Right to Notice**

The right to receive “notice” of a criminal charge or other alleged misconduct is considered to be one of the core requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Although due process requirements vary depending on the circumstances, at a minimum, a person is entitled to notice and an opportunity to be heard before suffering a loss of life, liberty, or property by the government. *In re D.B.*, 186 N.C. App. 556, 564 (2007). This basic protection was not afforded to juveniles prior to [In re Gault](#), 387 U.S. 1 (1967), which extended due process rights to children. Why is notice so important? When must notice be given? How much notice is required? These questions and others are answered in this third post in a series about *Gault*'s role in protecting the rights of juveniles in delinquency proceedings over the past fifty years.

### **Why is notice important?**

Receiving constitutionally sufficient notice of the charges is not just a perfunctory mandate. It serves three important functions: (1) to enable the juvenile to prepare a defense, (2) to allow the court to enter an adjudication of delinquency based on the alleged offense, and (3) to protect the juvenile from double jeopardy. [In re S.R.S.](#), 180 N.C. App. 151, 155-56 (2006).

The right to mount a defense against the charges, another tenet of *Gault*, is largely dependent on knowledge of the specific allegations. In some cases, the juvenile, parent, guardian, relatives, or friends may speculate or receive incomplete information regarding the allegations. Misinformation about an alleged act can cause confusion which may negatively impact the juvenile's initial meeting with counsel. Once the juvenile receives specific notice of the facts upon which a petition is based, defense counsel may proceed with accurate information to explore potential defenses and determine the direction of the case.

### **How much notice is required?**

You may recall that 15-year-old Gerald Gault was taken into police custody without notice to his parents after his neighbor accused him of making a prank phone call. Gerald's parents discovered he was in custody after sending his older brother out to look for him that evening. When Gerald's mother went to the detention facility, she was told that a hearing would be held in juvenile court the next day. On the day of the hearing, the arresting officer filed a “petition” that simply alleged Gerald was a minor under the age of 18 in need of the protection of the court because he was a “delinquent.” No factual basis for the charge was provided. Gerald's parents were not served with the petition and did not see it until two months later at a habeas proceeding. The only written notice they ever received was a note on plain paper with the date of the next hearing, delivered by an

officer three or four days after Gerald was initially taken into custody. *Gault*, 387 U.S. 5-6.

It's no surprise that the Supreme Court found this notice to be inadequate. The Court held that to comply with constitutional due process requirements, notice must be given that would be deemed adequate in a civil or criminal case. That is, it "must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must set forth the alleged misconduct with particularity." *Id.* at 33. The notice must also be in writing. Finally, because juvenile proceedings threaten not only the juvenile's liberty interests but also a parent's right to the custody of his or her child, the notice must be provided to both the juvenile and the juvenile's parents. *Id.*

### **When must notice be given?**

The constitutional requirements for notice established by *Gault* are codified in several Juvenile Code statutes. Notice of important details, particularly the possibility of confinement, must be given to juveniles and their parents at every stage of a juvenile proceeding. Some of the key notice provisions (and consequences for violating them) include:

- **Written Notice of the Allegations**

A juvenile petition must assert facts that properly allege a criminal offense and identify the juvenile as the perpetrator "with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation." [G.S. 7B-1802](#). The failure to properly allege each element of a criminal offense is a fatal defect which deprives the court of jurisdiction. *In re M.S.*, 199 N.C. App. 260 (2009). A jurisdictional defect can be raised at any time, even after an adjudication of delinquency has already occurred. *Id.* Thus, an appellate court will vacate the adjudication if the defect is discovered on appeal.

- **Service of the Summons and Petition**

Notice of the facts invoking the court's jurisdiction must be provided by service of the juvenile petition and summons on the juvenile and the juvenile's parent or guardian at least five days prior to the scheduled hearing (unless the court shortens the time for service). [G.S. 7B-1806](#). "The purpose of the juvenile summons is to provide notice to the juvenile and the juvenile's parent or guardian of the juvenile's rights, and of the date and time of the pending hearings." *In re S.C.B.*, 177 N.C. App. 811 (2006). The district court has no subject matter jurisdiction, if the petition and summons are not served. See *In re Mitchell*, 126 N.C. App. 432 (1997).

- **Notice of Rights When Making Admissions**

Before accepting a juvenile's admission of the allegations in a petition (similar to a guilty plea in criminal court), the judge is required to advise the juvenile of certain rights and determine whether

the juvenile is making an informed decision with a full understanding of the consequences. [G.S. 7B-2407](#). If a judge fails to make even one of the inquiries required by G.S. 7B-2407, it is reversible error. [In re T.E.F.](#), 359 N.C. 570 (2005).

- **Notice of Hearings**

Unless notified in open court or the court orders otherwise, a juvenile and his or her parent(s) must receive five days prior written notice of the date and time of all scheduled hearings. [G.S. 7B-1807](#). These notice requirements apply generally to all types of juvenile hearings, including custody review hearings, adjudication and disposition hearings, probation violation hearings, and post-release supervision hearings.

- **Notice of Probation Violations and/or Extensions**

Juveniles must receive notice and have an opportunity to be heard before the court may revoke the juvenile's probation or extend the probation term. [G.S. 7B-2510\(c\) and \(e\)](#). In general, the notice must inform the juvenile of the purpose of the hearing and allege probation violations with sufficient detail to notify the juvenile of the potential consequences. See [In re D.S.B.](#), \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 922 (2015) (juvenile had actual notice that he was subject to a level 3 disposition for a violation of probation despite a clerical error in the motion for review). The five-day written notice requirement in G.S. 7B-1807 also applies.

- **Notice of Extended YDC Commitments**

Juveniles may not be committed to the Division of Adult Correction and Juvenile Justice for placement in a youth development center longer than an adult could be imprisoned for the same offense, unless the Division determines they need further rehabilitation. [G.S. 7B-2513\(a\)](#). If the Division plans to extend a juvenile's commitment beyond the maximum term, it must provide *written* notice to the juvenile and the juvenile's parents 30 days prior to the juvenile's scheduled release date. [G.S. 7B-2515\(a\)](#). This notice requirement protects the juvenile's right to timely object to the extension and request a hearing. Thus, notice that fails to comply with the statutory requirements is reversible error which may result in the juvenile's release. See [In re J.L.H.](#), 230 N.C. App. 214 (2013) (verbal notice 30 days prior to juvenile's scheduled release was insufficient).

- **Notice of Post-Release Supervision Violations**

Similar to probation revocation, juveniles must receive notice and have an opportunity to be heard before the court may revoke a juvenile's post-release supervision. [G.S. 7B-2516](#). Violations of post-release supervision can result in revocation which triggers recommitment of the juvenile to a YDC. As a result, the Juvenile Code requires written notice of the nature and content of the alleged violations and notice that the purpose of the hearing is to determine whether the juvenile has

violated the terms of the post-release supervision such that revocation should be ordered. G.S. 7B-2516(a)(1). Although the statute requires “reasonable notice” to the juvenile, the five-day written notice requirement in G.S. 7B-1807 likely controls.

This list of notice requirements in the Juvenile Code, while incomplete, illustrates the importance of proper notice in protecting a juvenile’s right to a fair hearing – the fundamental meaning of due process. It also illustrates why charging errors in a juvenile petition matter so much (like alleging a larceny from *Walmart* instead of *Walmart, Inc.*) and why the court’s admission colloquy with a juvenile must be perfect. Our appellate courts have repeatedly said that there is a “greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution.” [T.E.F.](#), 359 N.C. at 575. Complying with these notice requirements is one of the ways juvenile court participants fulfill this duty.

*\*In collaboration with the NC Office of the Juvenile Defender, this post is the third in a series of posts related to In re Gault and its impact on due process rights for juveniles. The blog posts in this series are posted to both the On the Civil Side Blog and the Juvenile Defender Blog.*